Modification Report
Changes to Buy Back Liabilities
Modification Reference Number 0559

Version 2.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

It is proposed to change the current capacity neutrality driver in the Network Code, from Monthly System Entry Capacity (MSEC), to end of day firm entry capacity holdings at the national level, including purchases of Monthly and Daily System Entry Capacity plus, for the avoidance of doubt, any other firm capacity products which may be introduced. The calculation of holdings would reflect firm capacity surrender and trades, being based on final holdings rather than the initial allocation. Costs and revenues generated on a day would therefore be shared based on Users' net firm capacity holdings on that day. Invoicing arrangements would be unchanged from those used at present.

It is proposed that this approach would be implemented with effect from 1st October 2002.

2. Transco's Opinion

Transco supports implementation of this Proposal.

The capacity neutrality provisions in the Network Code require revenues and costs generated in the entry capacity regime to be allocated to Users according to their holdings of Monthly System Entry Capacity (MSEC). At present Users are unable to reduce their liability by selling on MSEC and no liabilities are attached to holdings of Daily System Entry Capacity. Transco believes that an efficient regime should offer Users opportunities to mitigate risks by trading on capacity and that a common liability regime should apply to all firm capacity.

This Proposal amends the present approach such that there is an opportunity for Users to manage liabilities by trading capacity. This would be expected to enhance liquidity in the capacity markets, which is consistent with promoting competition between shippers, and with providing appropriate signals to Transco about the value of capacity, which would be expected to assist in the economic and efficient operation of the transportation system.

Where Users enter zero priced buy-back offers prior to 17.00 hours on the gas day, Transco would, on a reasonable endeavours basis, accept these zero priced offers, thereby reducing the Users end of day firm entry capacity holdings. This may also assist Transco in understanding the likely profile of gas deliveries thereby enhancing the efficient and economic operation of the system. Transco anticipates that the Supplementary Statements envisaged in Ofgem's proposed Licence amendments would accommodate this part of the Proposal, however should those documents not be finalised before 1 October 2002, a modification to the Operational Guidelines may be required.

3. Extent to which the proposed modification would better facilitate the relevant objectives

This Proposal would increase the efficient and economic operation of the entry capacity regime by better enabling Users to manage buy back liabilities and could also promote competition between Users. It therefore furthers the relevant objectives in Standard Condition 7(1)(a) and (c) of Transco's GT Licence.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

Increased liquidity in capacity markets and of buy back offers to Transco.

b) development and capital cost and operating cost implications:

No significant costs are anticipated.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

Any additional System Operator costs incurred as a result of implementing this Proposal would be accounted for under the proposed internal cost incentive scheme, as set out in Ofgem's final proposals for System Operator incentives.

d) analysis of the consequences (if any) this proposal would have on price regulation:

There are no such consequences.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

There are no such consequences.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

Systems developments will be required to implement this Proposal and it is anticipated that these could be delivered sufficiently early to enable implementation on 1 October 2002 with delivery of the October invoice to the normal timetable.

7. The implications of implementing the Modification Proposal for Users

Implementation of this Proposal would enable Users to trade out of their buy back liabilities either by surrendering capacity to Transco or trading it to another User. Increased liquidity could reduce buy back prices and hence capacity management costs which are shared between Transco and Users.

8. The implications of implementing the Modification Proposal for Terminal Operators,Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party

There are no such implications

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

There are no such consequences.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages:

- Users will have an opportunity to trade out their buy-back liability;
- a daily calculation may enable better management of liabilities;
- discontinuities between firm capacity products will be removed;
- provide a stimulus to secondary market trading.

Disadvantages:

- requirement for more active capacity management at locations that might not be the subject of capacity management activity;
- increased complexity in the billing process.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Twelve representations were received:

Agip (UK) Ltd (Agip)
British Gas Trading Ltd. (BGT)
Shell Gas Direct (SGD)
TXU Europe Energy Trading Limited (TXU)
Powergen UK Plc. (Powergen)
SSE Energy Supply Ltd. (SSE)
London Electricity Group Plc. (LE)
BP Gas Marketing (BP)
Innogy Plc. (Innogy)
BG Group (BG)
TotalFinaElf Gas and Power Ltd. (TFE)
Statoil UK Ltd (Statoil)

Five respondents (Innogy, Powergen, SSE, BGS, SGD) support the Proposal and two respondents gave qualified support (TXU, Agip).
Five respondents (BGT, LE, BP, TFE, Statoil) do not support the Proposal.

11.1 Buy Back & Secondary Markets

Four respondents (Agip, Innogy, Powergen, SSE) expressed the view that the implementation of this Proposal would increase liquidity in both the buy back and secondary markets. Agip believes "this will encourage shippers to trade on any surplus capacity and to offer capacity back to Transco. Agip (UK) Ltd supports measures that will encourage liquidity in the secondary markets". Innogy observed that the Proposal "should have the collateral benefit of encouraging liquidity in the capacity market which, in turn, may lead to a more efficient level of buy back costs". However, Innogy also commented "the impact on liquidity and the level of secondary trading will be dampened due to the low intrinsic value of the capacity-only product compared to transaction costs". SSE considers that if implemented the Proposal "would encourage shippers to offer to sell firm capacity back to Transco as currently a shipper could offer its entire capacity holding to Transco to alleviate a constraint yet still incur a cost as part of the capacity neutrality smearing mechanism." It commented, "this is clearly inappropriate and inefficient". SSE also observed that the Proposal "would also facilitate a more focused targeting of costs on the day" and hopes "that the introduction of this change could lead to the development of innovative capacity management products, to the benefit of shippers and Transco in terms of reduced constraint management costs".

Transco Response

Transco welcomes support from Users for this Proposal and agrees that it should increase liquidity in the secondary and buy back markets as well as improving cost targeting.

11.2 Transco Acceptance of Zero Prices Bids

Six respondents (Agip, Shell, TXU, Innogy, BGT, LE) commented on this aspect of the Proposal.

TXU, Agip and Innogy were in favour of this aspect of the Proposal. Innogy supported "Transco's Proposal to accept zero-priced buy back offers on a reasonable endeavours basis" as it believes "that this provides a useful additional risk mitigation option for shippers". TXU considers "that the intention of this Proposal is good, but we would wish to see some more automated process giving greater certainty rather than the 'reasonable endeavours' basis suggested". TXU also commented on the possibility that an Operational Guidelines modification would be required to facilitate this change and "is of the opinion that it would be inappropriate to implement this modifications until all relevant changes…have been made".

Agip, although it expressed support for this element of the Proposal, "strongly opposes a deadline of 17:00 hours on the gas day for these offers. It believes "that this will enable Transco to avoid taking necessary buy back action in order to maximise their incentive payments". Statoil expressed similar concerns and observed that "smearing costs across all capacity holdings, as opposed to MSEC holdings, Transco is increasing the incentive on Users to give the capacity back to Transco rather than Transco pay the market price for that capacity, this will also directly impact on the incentive regime placed upon Transco under the proposed new licence conditions".

LE and SGD also expressed concern about the proposed 17:00 deadline. LE observed, if "a demand increase occurred after this point in time", it "would then be required to buy back this capacity again", LE is concerned this would increase costs, "risk exposure and, inevitably, the price passed onto the consumer". SGD considers "a 17:00 hrs deadline is unrealistic as Users still face uncertainties about their gas flows with over half the Gas Day remaining".

BGT and SGD did not support this element of the Proposal. BGT considers it "distorts the market price for capacity and undermines secondary trades". SGD expressed similar concerns, and believes it "would stifle competition by sterilising this capacity, which could otherwise have been sold through RGTA or the OTC market".

Transco Response

Transco offered this element of the Proposal following discussed at the Capacity Workstream on 11 July 2002. The intent was to provide a pragmatic means by which Users could relinquish capacity holdings. From both administrative and operational perspectives the early surrender of capacity that is unlikely to be used would be most helpful in managing both Transco's and Users' risk. Transco does not therefore consider it appropriate to accept obligations in this area but would look to evolve operational procedures to facilitate the economic and efficient operation of the system. Transco will consider the issues associated with different "deadlines" associated with this procedure and would look to discuss the merits of alternative "deadlines" with the NT&T Workstream and the Operational Forum before advising Users of the policy to be adopted.

It is not Transco's intention to avoid paying a 'market price' for capacity surrendered to it, when a capacity management action is required to manage flows on the system. Users will remain able to post offers for capacity buy back at non-zero prices if in their view market conditions make this a favourable strategy.

Whilst the Supplementary Statements envisaged under Ofgem's proposed amendments to the GT Licence will address this issue, it might be appropriate to consider an Operational Guidelines modification as a contingency in case the Supplementary Statements are not effective by 1 October 2002. Transco anticipates raising such a Modification Proposal during the next few days, should it consider this appropriate.

It will not be possible to develop systems to automatically accept zero priced bids in the short term, but Transco would anticipate being able to include such developments within later systems upgrades.

11.3 Impact on Investment Signals

SGD believes this Modification Proposal "should incentivise Users to purchase capacity for their physical requirements if the existing top down auction methodology is retained". SSE considers that this Proposal should "lead to a more efficient allocation of the primary product both in longer-term mechanisms and the shorter-term MSEC auctions" and it "should improve investment signals for Transco as shippers will not necessarily factor in the buy back risk when developing their bidding strategies".

LE believes the implementation of this Proposal "will lead to many more Shippers buying less capacity at the long term entry capacity auctions, as they will seek to hold back and buy as little as necessary until the day. This, in turn, will lead to reduced signals to Transco to build extra entry capacity in the future as the likelihood of Transco having to buy back will look to be small"; LE considers "a mechanism that discourages long term entry capacity signals will only endanger investment in the pipeline system and, hence, security of supply". BGT also believes that the Proposal would "incentivise shippers to minimise their capacity holdings to such an extent that capacity requirements may not be adequately covered in the primary auctions, this could have the effect that system security is compromised".

Innogy expressed the view that, on the day, firm capacity is a homogenous product and can see no reason why MSEC and DSEC should not face the same liability". However it also commented that the Proposal "changes the value of the daily product"

Transco Response

Transco does not believe that this Proposal will have a detrimental impact on Investment signals. This Proposal should encourage Users to purchase a level of capacity close to the level they expect to flow, which it might be argued could improve investment signals. Transco is not persuaded that Users will significantly change their capacity purchase strategies in response to this Proposal. It expects their capacity purchase strategies would be informed by budgetary controls and risk management.

Transco agrees with Innogy that on the day there is no difference between any category of firm capacity and that this Proposal more appropriately reflects the reality of capacity utilisation.

11.4 Further Developments

Innogy commented that it understands "that there are a number of potential further developments in this area that Transco is considering, principally in response to the new incentives within its GT Licence. We would encourage

Transco to continue to share its thinking with the industry so that changes, where appropriate, are made well in advance of future MSEC auctions".

BGS observed it would be desirable that there are further changes ahead of the next short term auctions" and expressed its support for "the principles in Modification 490/a much more so than in this Modification". However BGT does "not see any reason why this Proposal may now further Transco's relevant objectives where it did not last year" with reference to Modification Proposal 490/a. It anticipates "that this modification will be rejected on the same grounds".

LE suggested that in order to "mitigate constraints, liabilities should be targeted at the entry points where they occur (i.e. the Northern triangle)" and commented it "would welcome a methodology that will target Shippers causing buy back costs to Transco".

Innogy also expressed the view "that these arrangements may be appropriate for MSEC, but our strong preference remains for a long-term product that has no liabilities associated with it. We believe that applying the principle of shared buy back liabilities between shippers and Transco to long-term capacity, distorts the incentives on Transco to respond to auction signals and makes the product extremely difficult to value due to uncertain future liability".

Transco Response

Transco has indicated that it would be minded to raise a further Modification Proposal to consider some other possibilities for the sharing of buy back liabilities between Users. This has already been discussed in the Workstream process and Transco anticipates raising this issue at the NT&T Workstream on 1 August 2002. It agrees with LE and BGS that there may be scope for amending the redistribution approach to better deliver locational targeting. However Transco notes Ofgem's decision on Modification 0490/a which rejected that Proposal on the basis that the "present uncertainty in the actual inter-terminal substitutability means that it is not clear that it is possible to effectively target the costs of a system constraint to the cause of such a constraint". Transco recognises that the issue of locational cost targeting requires further consideration along with other cost targeting Proposals associated with the apportionment of costs in respect of interruptible capacity and the possible differentiation of used and unused capacity. These issues warrant consideration as part of another Modification Proposal.

Transco accepts the principle that long-term capacity should have no liabilities associated with it, however it does not believe this would be appropriate in a regime where Transco's rate of return is limited.

11.5 Timing of the Modification Proposal

Five respondents (SSE, LE, BP, BGT, Statoil) expressed concern about the timing of this Modification Proposal relative to the forthcoming MSEC auctions.

BP considers "that this Proposal, by virtue of its timing, reduces stability in the period immediately prior to the forthcoming auctions by proposing change to the regime and it does not therefore assist bidders in efficiently valuing capacity". It believes "it is inappropriate at this time to consider the Proposal, and that consideration should be given to its merits at some future time that is suitably distanced from entry capacity auctions". BGT stated it has "consistently advocated that the Auction process for the allocation of Entry Capacity must be conducted in an environment of stability and certainty. Therefore we oppose any temporal changes to the arrangements for the next round of auctions which take effect after the auction has taken place". It considers that "by the time that this modification is decided, users will have already committed to purchases of capacity on the basis of the prevailing definition of product and associated liabilities" and therefore proposes that the "modification is withdrawn before the first round of auctions and the issue addressed well ahead of the next round of auctions for capacity rights for the period April – September 2003". LE expressed similar concerns and SSE stated "that if this Proposal is to be implemented for 1 October 2002, it is important that shippers are aware of this decision before the forthcoming MSEC auctions" and considers "it would be beneficial to the outcome of the MSEC auctions if shippers are clear as to the liabilities associated with the product they are buying". Statoil commented that "changes to the capacity regime prior to a capacity auction should be kept to a minimum in order to assist Users in valuing the product they are committing to".

TFE is concerned "at the way changes are being introduced on an uncoordinated piecemeal basis, particularly when the industry is in wider discussions over the future of auctions both short and long term". It also expressed a desire for a "clear platform from which to move forward". In TFE's opinion "this can only be provided once the licence and associated statements (procurement guidelines, system management principles etc) have been published and agreed" Statoil observed that "Until the licence arrangements are fully understood it is difficult to determine the interactions between new incentives and the current Proposals to move the capacity incentives into the licence. To add further changes to the way the costs and revenues from daily sales and buy backs are apportioned before other proposed changes are made makes the task of interpreting theses changes more complicated"

Transco Response

Transco sympathises with respondents concerns about the timing of this Proposal. This Proposal has been discussed in the Workstream and the issues are understood. Transco hope that Ofgem are in a position to make a timely decision, such that the outcome is known before the forthcoming MSEC auctions begin. However Transco is of the opinion that the benefits of this Proposal are such that the timing of the Modification Proposal is justified.

Transco understands Users' concerns about the uncertainty surrounding the Licence and supplementary documents, but does not consider that this should have any significant impact on this Proposal.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Implementation is not required for this purpose.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

Implementation is not required having regard to any such proposed change.

14. Programme of works required as a consequence of implementing the ModificationProposal

There are no additional works required.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

Draft Modification Report issued	12th July 2002
Close-out for representation	26th July 2002
Final Modification Report issued	30th July 2002
Ofgem decision expected	1st August 2002
Implementation	1st October 2002
System delivered and first invoice issued	1st November 2002

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends implementation to take effect from 1 October 2002. This ensures that the commercial regime associated with summer 2002 capacity is unchanged, but allows Users to take account of the revised commercial framework prior to the primary auctions of capacity for the October 2002 to March 2003 period.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

[Draft] proposed legal text

SECTION B: SYSTEM USE AND CAPACITY

Delete all text at paragraph 2.13 and replace with text to read as follows:

2.13 **Capacity Neutrality Arrangements**

2.13.1 For each Aggregate System Entry Point the difference between amounts received or receivable and paid or payable by Transco in respect of Relevant Capacity Charges and certain other amounts in respect of each Day in a calendar month shall be payable to or recoverable from relevant Users (and such amount shall not be reduced by any amount to be retained or borne by Transco).

2.13.2 For each Aggregate System Entry Point, in relation to each Day:

(a) "**Relevant Capacity Revenues**" are the aggregate of the amounts payable to Transco by Users:

(i) by way of Capacity Charges in respect of:

(1) Daily System Entry Capacity where the User was registered as holding the Daily System Entry Capacity for the Day with effect from the start of the Day or at any time during the Day;

(2) Daily Interruptible System Entry Capacity,

at the Aggregate System Entry Point; and

(ii) System Entry Overrun Charges; and

(iii) where any User has negative Available System Entry Capacity, by way of System Entry Overrun Charges pursuant to (and calculated in respect of the amount determined under) paragraph 5.5.2(ii),

in respect of such Day; and

(b) "**Relevant Capacity Costs**" are the aggregate of the amounts payable by Transco to Users by way of:

(i) Capacity Surrender Charges; and

(ii) Aggregate Constraint Amounts pursuant to Section I3.7.2,

in relation to the Aggregate System Entry Point in respect of such Day.

2.13.3 In relation to each Aggregate System Entry Point and a Day, Transco shall pay to each relevant User an amount ("**Capacity Revenue Neutrality Charge**") determined as:

$$RCR \ * \ UFAC \ / \ AFAC$$

where:

RCR is the Relevant Capacity Revenues;

UAFC is the aggregate sum of the User's Fully Adjusted Firm Available System Entry Capacity at each Aggregate System Entry Point; and

AFAC is the aggregate sum of all User's Fully Adjusted Firm Available System Entry Capacity at each Aggregate System Entry Point,

in each case as determined at 04:00 hours on the relevant Day.

2.13.4 In relation to each Aggregate System Entry Point and a Day, each relevant User shall pay to Transco an amount ("**Capacity Cost Neutrality Charge**") determined as:

RCC * UFAC / AFAC

where:

RCC are the Relevant Capacity Costs,

and 'UFAC' and 'AUFC' have the meanings in paragraph 2.13.3.

2.13.5 For the purposes of this paragraph 2.13:

(a) the "**Capacity Neutrality Adjustment Amount**" for a Day in a calendar month (month 'm') is

(i) the sum of:

(1) the amount of any charge of a kind referred to in the definition of Relevant Capacity Revenues, and of any Capacity Neutrality Charge (payable to Transco), which was due for payment to Transco in month m-2 but were unpaid to Transco as at the last Day of month m:

(2) the amount of any interest paid (in accordance with Section S4.3.2) by Transco to any User on any Day in month m by virtue of the User having made an over-payment in respect of any of such amount as is referred to in paragraph (1) above;

less

(ii) the sum of:

(1) the amount of any charge of a kind referred to in the definition of Relevant Capacity Revenues, and of any Capacity Neutrality Charge (payable to Transco) which:

(A) was unpaid as at the last Day of month m-3 and was taken into account (under paragraph (a)(i) above) in calculating the Capacity Adjustment Neutrality Amount for month m-1, but

(B) has been paid to Transco since the last Day of month m-1;

(2) the amount of any interest paid (in accordance with Section S4.3.2) by any User to Transco on any Day in month m by virtue of late payment of any such charge as is referred to in paragraph (1) above,

divided by the number of Days in month m;

(b) "**Capacity Neutrality Charges**" comprise Capacity Revenue Neutrality Charges, Capacity Cost Neutrality Charges and Capacity Adjustment Neutrality Charges;

(c) "**Relevant Capacity Charges**" comprise Relevant Capacity Revenues and Relevant Capacity Costs; and

(d) a "**relevant User**" is a User registered as holding Firm System Entry Capacity at an Aggregate System Entry Point on the relevant Day.

2.13.6 In relation to a Day (and all Aggregate System Entry Points), where:

(a) the Capacity Neutrality Adjustment Amount (if any) is negative, Transco shall pay to each relevant User; and

(b) the Capacity Neutrality Adjustment Amount (if any) is positive, each relevant User shall pay to Transco,

an amount ("**Capacity Neutrality Adjustment Charge**")) determined as:

CNAA * UFAC / AFAC

where CNAA is the Capacity Neutrality Adjustment Amount and 'UFAC' and 'AFAC' have the meanings in paragraph 2.13.3 (provided that in the event that no Firm System Entry Capacity was held by any User at any Aggregate System Entry Point on such Day, 'UAFC' and 'AUFC' shall be determined on the basis of the most recent preceding Day in respect of which a User held Firm System Entry Capacity at an Aggregate System Entry Point).

2.13.7 Capacity Neutrality Charges shall be invoiced and payable in accordance with Section S."

TRANSITION DOCUMENT, PART II

Amend paragraph 8.1.12 to read as follows:

"<u>In respect of the calendar months April to September 2002 (inclusive) ("**relevant month**")</u> and without prejudice to…., Section B2.13 shall not apply and the arrangements set out in….in respect of each <u>relevant</u> month….payable by Transco in a <u>relevant</u> month…and in respect of a <u>relevant</u> month:

(1) ….

(a) ….(for a Day in a relevant month)….

(b) ….in the relevant month…

(3) ….in the relevant month; and

(4) ….in the relevant month."

Amend paragraph 8.1.13 to read as follows:

"….and the application of paragraph 8.1.12 in respect of the calendar months April to September 2002 (inclusive), paragraphs (1) to (8) (inclusive) shall apply…."

Signed for and on behalf of Transco.

Signature:

Tim Davis
Head of Regulation NT&T

Date:

Gas and Electricity Markets Authority Response:

> In accordance with Condition 9 of the Standard Conditions of the Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0559**, version **2.0** dated **02/08/2002**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **2.0**.

Signature:

Process Manager - Network Code

Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:

   (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or

   (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriate

   provided that if the Authority does not so approve the Agreement then Clause 3 shall apply.

2. If the Authority does so approve this Agreement in accordance with the terms of the Order <u>(whether such approval is actual or deemed by effluxion of time)</u> any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.

3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, <u>had it not been repealed, would</u> apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) <u>or 2(2)(b)(ii)</u> of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.

4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.